

WATER CONTRACT
Between:
CITY OF ELIZABETH
And
CITY OF NEWARK, NEW JERSEY

This Agreement made this 30 day of January 2018 between the City of Elizabeth, a municipal corporation of the State of New Jersey, hereinafter called "Elizabeth," and the City of Newark, Municipal Corporation of the State of New Jersey, hereinafter called "Newark":

WHEREAS, Elizabeth has heretofore been provided with a potable water supply from Newark for the inhabitants of Elizabeth since at least 1929; and

WHEREAS, the New Jersey Department of Environmental Protection has now demanded that contracts be for a period of at least ten (10) years; and

WHEREAS, Elizabeth desires to enter into an agreement with Newark to provide said water supply to its inhabitants for a period of ten (10) years; and

WHEREAS, Newark has available water and the capacity and is able to supply water to Elizabeth.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein contained by each of the Parties hereto it is hereby covenanted and agreed as follows:

1. That Newark agrees to furnish a supply of water to Elizabeth principally from its Wanaque Water Supply System but supplemented by its Pequannock Water Supply System as required for a period of ten (10) years beginning January 1, 2017 and ending December 31, 2026 in the estimated amount of 10.5 million gallons per day (MGD) yearly average.
2. Elizabeth agrees to take from Newark within the aforesaid quantity all of the water necessary to meet the requirements of Elizabeth with the exception of approximately eight (8) MGD which will be purchased from the American Water Co.
3. In the event that Elizabeth desires to increase the quantity of water to be taken and paid for by Elizabeth from Newark under this Contract, Elizabeth may serve upon Newark a written notice signed by a proper officer of Elizabeth stating the new quantity of water desired.

In the event Newark is then able to serve Elizabeth with said additional water, Newark shall signify its acceptance of the new quantity within thirty (30) days by a written acceptance and served upon Elizabeth. The new quantity shall be

effective upon acceptance by Newark and shall remain in effect for the remainder of the term of the contract unless modified.

4. It is mutually understood and agreed that the water purchased by Elizabeth from Newark from the Wanaque supply shall be delivered principally from the 60-inch pipeline in Virginia Street, Elizabeth, through a Venturi meter now existing. Also water will be supplied through the existing 6-inch meter connection in South Elmora Avenue, Elizabeth, and the 8-inch meter connection in Trinity Place, Elizabeth, New Jersey.
5. It is further mutually understood and agreed that the 16-inch high pressure, Dayton Street, Newark-Cross Avenue Elizabeth connection presently existing shall be maintained with a suitable regulator by Elizabeth for the purpose of obtaining water from the Pequannock Water Supply of Newark in the event of a lack of availability of water from other sources available to Elizabeth. The 10-inch McClellan Street-Neck Lane connection presently existing shall be maintained by Elizabeth for the purpose of obtaining water from the Wanaque Supply if required.
6. It is further mutually agreed that three (3) future connections with Newark to supply water to Elizabeth shall be constructed as needed by Elizabeth from the 48 and 60-inch Wanaque Aqueduct. The specific location of these proposed future connections are: (a) 20-inch Trinity Place and Magnolia Avenue; (now existing); (b) 20-inch Julian Place and Union Street; (c) 16-inch South Elmora Avenue and Pennsylvania Railroad. These connections shall be constructed and maintained by and at the expense of Elizabeth with suitable valves, vaults, meters and other necessary appurtenances. Elizabeth shall submit detailed drawings of all future connections to Newark for approval and upon Newark's approval, Elizabeth shall complete all work.
7. Delivery of water to the Elizabeth-Newark City line shall be at a pressure normally maintained in the 60-inch Newark Wanaque pipeline, except as such times as interruption to the supply may occur.
8. Under ordinance 6S&FA, adopted by Newark on October 6, 1993, Newark assumed ownership of and responsibility to maintain all meters. To this end, all existing meters on connections between Elizabeth and Newark will be maintained by Newark at the sole expense of Newark and any new meters shall be installed at the expense of Elizabeth. Elizabeth shall have the right to read and inspect the meters upon reasonable notice. Location of future appurtenances and vaults shall be done by and at the expense of Elizabeth under the supervision and approval of Newark. A meter approved, furnished and maintained by Newark shall be installed on each future connection at the expense of Elizabeth.

9. This Contract shall be for a ten (10) year period commencing on January 1, 2017 and terminating December 31, 2026.

10. Elizabeth agrees to pay for said water monthly, at the following rate per million gallons:

January 1, 2017 \$2,950.00, except as noted below.

Annually thereafter, the Director of Water and Sewer Utilities shall adjust the water rate not to exceed the Cost of Living Adjustment. This shall be based on the Implicit Price Deflator for State and Local Governments for New Jersey and published by the U.S. Department of Commerce, Bureau of Economic Analysis. The Cost of Living Adjustment shall be effective on January 1st of every year of this Agreement and shall not exceed the maximum increase allowed by the State of New Jersey under the Cost of Living Adjustment (COLA).

Newark reserves the right to increase the cost of water being provided under this Contract in addition to the Cost of Living Adjustment for any and all charges, fees, or expenses imposed by the State of New Jersey Department of Environmental Protection and/or the United States Environmental Protection Agency, including but not limited to mandated fees and capital expenditure and improvement projects. This Contract will also provide for an automatic pass through of any incurred cost from the North Jersey District Water Supply Commission.

It is understood by and between the Parties that the current rate increase includes the commencement of the following capital improvement projects:

- Dam repairs at Charlottesburg, Canistear, Clinton, and Echo Lake;
- Belleville Reservoir Cleaning and Repairs;
- Pressure Zone Analysis;
- Improvements for firm capacity for reservoirs;
- Cleaning and relining of water mains;
- Explore use of green technology at dams; and
- Installation of solar panels and windmills.

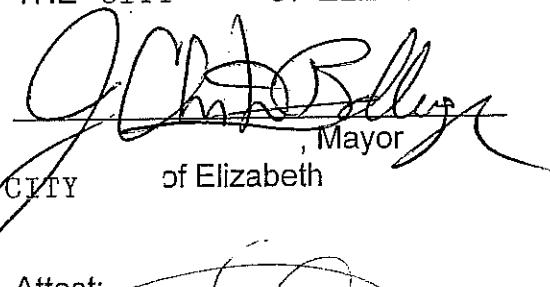
It is agreed by and between the Parties that the aforementioned capital improvement projects shall not be a basis for a further rate increase during the term of this contract unless extraordinary or unforeseen circumstances occur.

It is further understood that this Contract is subject to renegotiation as to charges only at the end of the third and fifth years of the Contract.

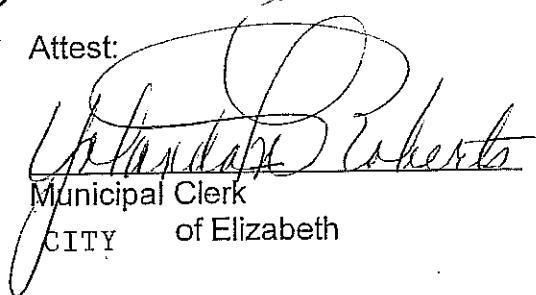
11. In case of dispute regarding the quantity of water delivered during any month, payment shall be made for the undisputed portion of said delivery and the controversy as to the remaining part shall be settled by negotiations between the Parties. In the event that the matter cannot be remedied, Newark reserves the right to bring the matter to court for adjudication. Payments are due upon receipt of the billing invoice and interest and penalties shall be assessed on all accounts not paid within thirty (30) days of the due date at the rate of one and a half percent (1.5%) of the overdue amount. The penalty shall be chargeable each and every additional month the account is not paid in full. Additionally, all current year charges must be paid prior to the last working business day of the year.
12. Newark and Elizabeth understand and agree that Newark shall not be liable under any circumstances to Elizabeth or any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent thereof for any interruption or discontinuance, deficiency or failure of the water supply, or if Newark shuts off water to make repairs or connections that result in the interruption of Newark's water supply.
13. Elizabeth agrees to indemnify and save harmless Newark from all actions, suits, judgments, loss, expense, cost and damage which may arise by reason of any damage or injury sustained by any person or property by or from any water supplied by Newark after such water has passed out of the water mains or pipes of Newark to be used by Elizabeth without respect to any finding by any court or other adjudicatory body regarding the fault of Newark with respect to any such damage or injury except where Newark, its agents or servants have acted with gross negligence.
14. It is mutually agreed that this Contract shall become effective and binding upon the Parties hereto on January 1, 2017.
15. This Contract shall remain in force up through December 31, 2026.
16. This Contract is subject to the approval of the Division of Water Supply and Geoscience, Bureau of Water Allocation & Well Permitting of the Department of Environmental Protection of the State of New Jersey; the North Jersey District Water Supply Commission and of any other agency having jurisdiction over matters of this kind.

IN WITNESS WHEREOF, the Parties hereto have caused their respective corporate seals to be hereunto affixed and the Agreement to be signed by their duly authorized officers, the day and year first herein mentioned.

THE CITY OF ELIZABETH


John B. Kelly, Mayor
CITY of Elizabeth

Attest:


Linda Roberts
Municipal Clerk
CITY of Elizabeth

THE CITY OF NEWARK


Andrea Adebawale, Director
Department of Water & Sewer Utilities

Attest:


Kenneth Louis
3/22/18
City Clerk
CITY of Newark

Approved as to form & legality


Kenyatta Stewart, Esq.
Acting Corporation Counsel
CITY of Newark

CITY OF ELIZABETH
APPROVED
AS TO FORM
WRH
PHYSICAL CONDITIONS
TERMS & CONDITIONS
WRH
DESCRIPTION

Resolution of the City of Newark, N.J.

AUG 02 2017

NO. 7R12 F

Date of Adoption _____

Approved as to Form and Legality on Basis of Facts Set Forth



K. Shultz
Acting Corporation Counsel

Council Member Council of the whole

Factual contents certified by

Karen Deem
Assist Director, Public Works
Title: JW/ally BA

presents the following Resolution:

WHEREAS, the Township of Elizabeth desires to enter into an agreement with the City of Newark for the supply of potable water from the City of Newark's Pequannock Water Supply System ("Potable Water Contract"); and

WHEREAS, the previous agreement with the Township of Elizabeth for potable water expired on December 31, 2015; and

WHEREAS, the City of Newark desires to accept and execute the attached Potable Water Contract to cover the period January 1, 2017 through December 31, 2026 a period of ten (10) years for continuation of said water supply; and

WHEREAS, the City of Newark is able and willing to supply water to the Township of Elizabeth.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY THAT:

1. The Municipal Council hereby authorizes the Mayor and/or his designee, the Director of the Department of Water and Sewer Utilities to enter into an Agreement for the supply of water from Newark's Pequannock Water Supply System to the Township of Elizabeth for a period of ten (10) years beginning January 1, 2017 through December 31, 2026 ("Agreement" or "Potable Water Contract").
2. This Agreement is hereby ratified from January 1, 2017 through the date of adoption by the Municipal Council.
3. Pursuant to the terms of the Water Contract, the City shall charge the following rates:
4. January 1, 2017 through December 31, 2017, the rate shall be \$2,950.00 per month per million gallons. Beginning January 1, 2018, and annually thereafter, the Director of the Department of Water and Sewer Utilities shall adjust the water rate upward in an amount not to exceed the Adjustment based upon the Implicit Price Deflator of State and Local Governments for New Jersey and published by the United States Department of Commerce, Bureau of Economic Analysis. Newark reserves the right to increase the cost of water being provided under this contract in addition to the Cost of Living Adjustment for any and all charges imposed by the State of New Jersey for mandated water treatment cost increases, fees and capital improvement projects. This contract will also provide

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FORM 4

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for an automatic pass through of any incurred cost from North Jersey District Water Supply Commission.

5. This Agreement is awarded without competitive bidding pursuant to N.J.S.A. 40A:11-5(2) because the contracting parties are New Jersey Municipalities.
6. No municipal funds need to be expended for this resolution. This Agreement is a revenue generating contract.
7. The Director of the Department of Water and Sewer Utilities shall forward a copy of this resolution and fully executed Contract to the Division of Environmental Protection and the North Jersey District Water Supply Commission. This Agreement is subject to the approval of the aforementioned.
8. The attached Water Contract became effective January 1, 2017 and will continue to December 31, 2026. Any changes to the Agreement will require the approval of the Newark Municipal Council.
9. The Director of the Department of Water and Sewer Utilities shall file a copy of this resolution and a fully executed copy of the Water Contract in the Office of the City Clerk.

STATEMENT

This resolution ratifies and authorizes the Director of the Department of Water and Sewer Utilities to execute the attached Agreement for the supply of potable water from Newark's Pequannock Water Supply System to with the Township of Elizabeth, for a period of ten (10) years from January 1, 2017 to December 31, 2026 at the rate of \$2,950.00 per month per million gallons for the first year, and an annual adjustment upward thereafter beginning January 1, 2018.

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RECORD OF COUNCIL VOTE ON FINAL PASSAGE

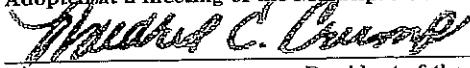
Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB
Amador				✓	Chaneyfield Jenkins	✓				Quintana	✓			
Gonzalez	✓				McCallum, Jr.	✓				Ramos, Jr.	✓			
James	✓				Osborne	✓				Crump, President	✓			

✓ Indicates Vote

AB - Absent

NV - Not Voting

Adopted at a meeting of the Municipal Council of the City of Newark, N.J.,


President of the Council

AUG 02 2017

016

City Clerk

BY CITY COUNCIL AS A WHOLE:

WHEREAS, the Business Administrator has requested authorization for the proper City Officials to execute a Water Agreement with the City of Newark for the ten-year period beginning January 1, 2017 and extending to December 31, 2026. The New Jersey Department of Environmental Protection has mandated the need for a long-term water supply contract, which they conclude to be ten years; and

WHEREAS, the City of Newark has an ample water supply available for the City to satisfy this contract in the amount of 10.5 million gallons per day (MGD) through its duration on an annual basis; and

WHEREAS, the water rate of 2017 calendar year is \$2,950.00, which is an increase of 13.7% over the prior year. Beginning the second year of the contract, January 1, 2018, and annually thereafter, the water rate shall be adjusted upward in an amount based on the Implicit Price Deflator for State and Local Government for New Jersey not to exceed the maximum increase allowed by the State of New Jersey under the Cost of Living Adjustment. Newark reserves the right to also increase the cost of water for charges imposed by the State of New Jersey and for incurred costs from the New Jersey District Water Supply Commission. Capital expenditures will be amortized by Newark on the basis of existing bond law. The water rates will be subject to renegotiations at the end of the third and fifth year; and

WHEREAS, sufficient funds are available through Liberty Water Company, who provides operation, maintenance and management services for the City of Elizabeth's water system; now, therefore, be it

RESOLVED, that the City Council of the City of Elizabeth authorizes the proper City Officials to execute a Water Agreement with the City of Newark for the ten-year period beginning January 1, 2017 and extending to December 31, 2026 at a rate of \$2,950.00/MG, subject to the rate adjustments imposed by the State.

ADOPTED BY CITY COUNCIL OF
ELIZABETH, NJ AT MEETING
SEP 12 2017

YOLANDA M. ROBERTS
CITY CLERK

Mayor	Police Dir.	Personnel	Bd. Adjust.
Bus. Admin.	Pub. Works Dir.	Judge	Plan. Bd.
City Atty.	Recreation Dir.	Assessor	Chief Fin. Of.
Finance Dir.	Treasurer	Engineer	Policy & Plan
Fire Dir.	Auditor	Ed. Educa	Jail/H-Serv-F
HWH Dir.	Purchasing		

Luis P. Diaz
City Clerk